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Prepared By _____

Approved By _____

An act to amend Sections 23101 and 25128 of, to amend, repeal, and add Section 25136 of, and to repeal Section 25128.5 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 23101 of the Revenue and Taxation Code is amended to read:

23101. (a) "Doing business" means actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(b) For taxable years beginning on or after January 1, 2011, a taxpayer is doing business in this state for a taxable year if any of the following conditions has been satisfied:

(1) The taxpayer is organized or commercially domiciled in this state.

(2) Sales, as defined in subdivision (e) or (f) of Section 25120 as applicable for the taxable year, of the taxpayer in this state exceed the lesser of five hundred thousand dollars (\$500,000) or 25 percent of the taxpayer's total sales. For purposes of this paragraph, sales of the taxpayer include sales by an agent or independent contractor of the taxpayer. For purposes of this paragraph, sales in this state shall be determined using the rules for assigning sales under ~~Section~~ Sections 25135 and ~~subdivision (b) of Section~~ 25136, and the regulations thereunder, as modified by regulations under Section 25137.

(3) The real property and tangible personal property of the taxpayer in this state exceed the lesser of fifty thousand dollars (\$50,000) or 25 percent of the taxpayer's total real property and tangible personal property. The value of real and tangible personal property and the determination of whether property is in this state shall be determined using the rules contained in Sections 25129 to 25131, inclusive, and the regulations thereunder, as modified by regulation under Section 25137.

(4) The amount paid in this state by the taxpayer for compensation, as defined in subdivision (c) of Section 25120, exceeds the lesser of fifty thousand dollars (\$50,000) or 25 percent of the total compensation paid by the taxpayer. Compensation in this state shall be determined using the rules for assigning payroll contained in Section 25133 and the regulations thereunder, as modified by regulations under Section 25137.

(c) (1) The Franchise Tax Board shall annually revise the amounts in paragraphs (2), (3), and (4) of subdivision (b) in accordance with subdivision (h) of Section 17041.

(2) For purposes of the adjustment required by paragraph (1), subdivision (h) of Section 17041 shall be applied by substituting “2012” in lieu of “1988.”

(d) The sales, property, and payroll of the taxpayer include the taxpayer’s pro rata or distributive share of pass-through entities. For purposes of this subdivision, “pass-through entities” means a partnership or an “S” corporation.

SEC. 2. Section 25128 of the Revenue and Taxation Code is amended to read:

25128. (a) (1) Notwithstanding Section 38006, for taxable years beginning before January 1, 2011, all business income shall be apportioned to this state by multiplying the business income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four, except as provided in subdivision (b) or (c).

(2) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2011, all business income of an apportioning trade or business, other than an apportioning trade or business described in subdivision (b), shall be apportioned to this state by multiplying the business income by the sales factor.

(b) If an apportioning trade or business derives more than 50 percent of its “gross business receipts” from conducting one or more qualified business activities, all business income of the apportioning trade or business shall be apportioned to this state by multiplying business income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

(c) For purposes of this section, a “qualified business activity” means the following:

- (1) An agricultural business activity.
- (2) An extractive business activity.
- (3) A savings and loan activity.
- (4) A banking or financial business activity.

(d) For purposes of this section:

(1) “Gross business receipts” means gross receipts described in subdivision (e) or (f) of Section 25120 (other than gross receipts from sales or other transactions within an apportioning trade or business between members of a group of corporations whose income and apportionment factors are required to be included in a combined report under Section 25101, limited, if applicable, by Section 25110), whether or not the receipts are excluded from the sales factor by operation of Section 25137.

(2) “Agricultural business activity” means activities relating to any stock, dairy, poultry, fruit, furbearing animal, or truck farm, plantation, ranch, nursery, or range. “Agricultural business activity” also includes activities relating to cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including, but not

limited to, the raising, shearing, feeding, caring for, training, or management of animals on a farm as well as the handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated.

(3) “Extractive business activity” means activities relating to the production, refining, or processing of oil, natural gas, or mineral ore.

(4) “Savings and loan activity” means any activities performed by savings and loan associations or savings banks which have been chartered by federal or state law.

(5) “Banking or financial business activity” means activities attributable to dealings in money or moneyed capital in substantial competition with the business of national banks.

(6) “Apportioning trade or business” means a distinct trade or business whose business income is required to be apportioned under Sections 25101 and 25120, limited, if applicable, by Section 25110, using the same denominator for each of the applicable payroll, property, and sales factors.

(7) Paragraph (4) of subdivision (c) shall apply only if the Franchise Tax Board adopts the Proposed Multistate Tax Commission Formula for the Uniform Apportionment of Net Income from Financial Institutions, or its substantial equivalent, and shall become operative upon the same operative date as the adopted formula.

(8) In any case where the income and apportionment factors of two or more savings associations or corporations are required to be included in a combined report

under Section 25101, limited, if applicable, by Section 25110, both of the following shall apply:

(A) The application of the more than 50 percent test of subdivision (b) shall be made with respect to the “gross business receipts” of the entire apportioning trade or business of the group.

(B) The entire business income of the group shall be apportioned in accordance with either subdivision (a) or (b), ~~or subdivision (b) of Section 25128.5~~, as applicable.

SEC. 3. Section 25128.5 of the Revenue and Taxation Code is repealed.

~~25128.5. (a) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2011, any apportioning trade or business, other than an apportioning trade or business described in subdivision (b) of Section 25128, may make an irrevocable annual election on an original timely filed return, in the manner and form prescribed by the Franchise Tax Board to apportion its income in accordance with this section, and not in accordance with Section 25128.~~

~~(b) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2011, all business income of an apportioning trade or business making an election described in subdivision (a) shall be apportioned to this state by multiplying the business income by the sales factor.~~

~~(c) The Franchise Tax Board is authorized to issue regulations necessary or appropriate regarding the making of an election under this section, including regulations that are consistent with rules prescribed for making an election under Section 25113.~~

SEC. 4. Section 25136 of the Revenue and Taxation Code is amended to read:

25136. (a) For taxable years beginning before January 1, 2011, ~~and for taxable years beginning on or after January 1, 2011, for which Section 25128.5 is operative and an election under subdivision (a) of Section 25128.5 has not been made,~~ sales, other than sales of tangible personal property, are in this state if:

(1) The income-producing activity is performed in this state; or

(2) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

~~(3) This subdivision shall apply, and subdivision (b) shall not apply, for any taxable year beginning on or after January 1, 2011, for which Section 25128.5 is not operative for any taxpayer subject to the tax imposed under this part.~~

~~(b) For taxable years beginning on or after January 1, 2011:~~

~~(1) Sales from services are in this state to the extent the purchaser of the service received the benefit of the service in this state.~~

~~(2) Sales from intangible property are in this state to the extent the property is used in this state. In the case of marketable securities, sales are in this state if the customer is in this state.~~

~~(3) Sales from the sale, lease, rental, or licensing of real property are in this state if the real property is located in this state.~~

~~(4) Sales from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state.~~

~~(5) (A) If Section 25128.5 is operative, then this subdivision shall apply in lieu of subdivision (a) for any taxable year for which an election has been made under subdivision (a) of Section 25128.5.~~

~~(B) If Section 25128.5 is not operative, then this subdivision shall not apply and subdivision (a) shall apply for any taxpayer subject to the tax imposed under this part.~~

~~(C) Notwithstanding subparagraphs (A) or (B), this subdivision shall apply for purposes of paragraph (2) of subdivision (b) of Section 23101.~~

~~(e) The Franchise Tax Board may prescribe those regulations as necessary or appropriate to carry out the purposes of subdivision (b).~~

(b) This section shall not apply to taxable years beginning on or after January 1, 2011, and as of December 31, 2011, is repealed.

SEC. 5. Section 25136 is added to the Revenue and Taxation Code, to read:

25136. (a) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2011, sales, other than sales of tangible personal property, are in this state if:

(1) Sales from services are in this state to the extent the purchaser of the service received the benefit of the services in this state.

(2) Sales from intangible property are in this state to the extent the property is used in this state. In the case of marketable securities, sales are in this state if the customer is in this state.

(3) Sales from the sale, lease, rental, or licensing of real property are in this state if the real property is located in this state.

(4) Sales from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state.

(b) The Franchise Tax Board may prescribe regulations as necessary or appropriate to carry out the purposes of this section.

SEC. 6. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

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Prepared By _____

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LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: Corporation taxes: sales: singles sales factor.

The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, apportions the income between this state and other states and foreign countries in accordance with a specified 4-factor formula based on the property, payroll, and sales within and without this state, except that in the case of an apportioning trade or business that derives more than 50% of its gross business receipts from conducting one or more qualified business activities, as defined, business income is apportioned in accordance with a specified 3-factor formula. That law, for taxable years beginning on or after January 1, 2011, allows a taxpayer to have that income apportioned in accordance with a single sales factor formula, except as provided, pursuant to an

irrevocable annual election, as specified. That law also provides that sales of tangible and intangible personal property are in this state in accordance with specified criteria.

This bill would, for taxable years beginning or after January 1, 2011, revise the rules which determine whether a taxpayer is doing business within this state, revise the provisions which determine whether specific sales occur in this state, and require a taxpayer, except as provided, to apportion their income in accordance with a single sales factor.

This bill would constitute a change in state statute that would result in a taxpayer paying a higher tax the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.